

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1045 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----espondent No. 1

ISHWARLAL HARJIVANDAS SONI

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioners

Ld.APP Mr.D.N.Patel with Mr.P.G.Desai ld.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 21/08/97

ORAL JUDGEMENT

Rule. Mr.D.N.Patel waives service of Rule.

2. Apparently, what the learned trial Judge has done is to frame charge at page 135 of this compilation at Exh.103 in Sessions Case No.7/96 on 21-7-1997 and in that

he had taken into consideration some directions issued by this Court. These directions are found in the order of this Court given on 30th January 1995 in group of matters, the first one being SCR.A No.303 of 1993. Pages 70 to 73 are the copies of that order. All the parties before the Court had agreed upon certain formal things and accordingly directions were invited. As a part of the directions, at page 72, the learned Judge also directed the trial Court that, while framing charge, it shall take into consideration the papers along with the chargesheet as well as the entire record and all papers prepared by the Gujarat State CID Crime and submitted in Criminal Case no.5 of 1994 and after examining the Report, if any, submitted to the learned JMFC by the Gujarat State CID Crime and after hearing the parties etc.

3. In the process, what has happened is, that in an otherwise elaborate charge pages 135 to 138 upto para 7 page 137, charge in a particular manner has been framed and in para 8, in the alternative, charge is framed and that is where, according to the petitioners, the learned trial Judge has committed grave error.

4. On behalf of the State, Shri D.N.Patel drew my attention to Annexure J, page 83, given in that very Sessions Case No.95 of 1993 by one Shri A.M.Parekh on behalf of petitioner no.1 seeking copies of the papers where the decision given by the learned Additional Sessions Judge at Pathan on 14-9-1996 is to the effect that the State is not relying upon the papers of CID, Crime Investigation in connection with Criminal Case No.5 /94 and therefore, these papers cannot be given to the accused.

5. Apparently, in this background, the trial Court shall have to consider whether these papers do form basis of any part of the case of the prosecution either as a main case or in the alternative, and for this purpose, it shall have to hear the Public Prosecutor as well as the defence lawyer appearing for the respective accused and frame the charge again. From the record, it appears that after framing of the charge at Exh.103, plea of one of the petitioners i.e. petitioner no.1 has been recorded at Exh.107, page 140 and he has entered the plea of not guilty. Obviously, therefore, when the charge framed at Exh.103 itself is set aside, the plea will have to be recorded again and the said plea, at Exh.107 is not to be taken into consideration for any purpose whatsoever.

6. The petition, therefore, stands allowed to the

aforesaid extent and the trial Court shall, after hearing both the sides, reframe the charge, record plea of the concerned accused and proceed with the Sessions Case in accordance with law.

7. Rule is made absolute accordingly.
